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Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson*

Summary

This is the third annual report submitted to the Human Rights Council by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson.

In chapter II of the report, the Special Rapporteur lists his key activities undertaken from 10 January to 16 December 2013. In chapter III, the Special Rapporteur examines the use of remotely piloted aircraft, or drones, in extraterritorial lethal counter-terrorism operations, including in the context of asymmetrical armed conflict, and allegations that the increasing use of remotely piloted aircraft, or drones, has caused a disproportionate number of civilian casualties, and makes recommendations to States. The present report constitutes the continuation of the Special Rapporteur's interim report on the use of drones to the General Assembly (A/68/389).

* Late submission.

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I. Introduction

1. The present report is submitted to the Human Rights Council pursuant to its resolution 22/8. In the present report, the Special Rapporteur lists his key activities undertaken from 10 January to 16 December 2013 and focuses thematically on the use of remotely piloted aircraft, or drones, in extraterritorial lethal counter-terrorism operations, including in the context of asymmetrical armed conflict, and its civilian impact, and makes recommendations to States.

II. Activities of the Special Rapporteur

2. On 31 January and 1 February 2013, the Special Rapporteur participated in an international conference on national and regional counter-terrorism strategies convened by the United Nations Counter-Terrorism Centre in Bogota.

3. On 22 February, the Special Rapporteur participated in a high-level policy seminar on targeted killing, unmanned aerial vehicles and European Union policy, held at the European University Institute in Florence, Italy.

4. On 25 February, the Special Rapporteur organized a workshop in Geneva for a high-level Iraqi delegation on conflict resolution and peacebuilding in the context of terrorist violence.

5. On 4 March, the Special Rapporteur participated in a panel discussion, organized by the Open Society Justice Initiative in Geneva, on issues arising from the Initiative's report, *Globalizing Torture: CIA Secret Detention and Extraordinary Rendition*.[1]

6. On 5 March, the Special Rapporteur presented his report on the framework principles for securing the accountability of public officials for gross or systematic human rights violations committed in the course of State-sanctioned counter-terrorism initiatives (A/HRC/22/52) to the Human Rights Council at its twenty-second session.

7. On 6 March, the Special Rapporteur participated in a briefing given to the European Parliament in Brussels on the human rights implications of the targeted killing programme of the United States of America.

8. From 11 to 13 March, the Special Rapporteur travelled to Islamabad to gather information on the impact of drones on the civilian population for the present report. During his visit, he met officials from the ministries of foreign affairs, defence and human rights and other relevant entities, including a senior representative of the secretariat of the Federally Administered Tribal Areas and the Chair of the Senate Standing Committee on Defence and Defence Production.

9. From 8 to 12 April, the Special Rapporteur conducted a visit to Burkina Faso, at the invitation of the Government. He will present his report thereon (A/HRC/25/59/Add.1) to the Human Rights Council at its current session.

10. On 23 April, the Special Rapporteur participated in a side event at the twenty-second session of the Commission on Crime Prevention and Criminal Justice, held in Vienna, on victims of acts of terrorism, and addressed the Commission in plenary meeting on 24 April.

11. On 25 April, the Special Rapporteur participated in a joint hearing, held in Brussels, of the subcommittees on human rights and on security and defence of the European

[1] New York, Open Society Foundations, 2013.

Parliament on the study *Human Rights Implications of the Usage of Drones and Unmanned Robots in Warfare*.[2]

12. On 3 May, the Special Rapporteur travelled to Paris, where he met senior representatives of the Presidency and the ministries of foreign affairs and defence to discuss issues relevant to the present report.

13. On 14 May, the Special Rapporteur participated as a panellist in a debate entitled "Drone wars: counter-terrorism and human rights", organized by the American Society of International Law and the New America Foundation.

14. From 1 to 7 June, the Special Rapporteur attended meetings in Washington, D.C., with senior lawyers at the United States Department of State, the Department of Defense, the Department of Justice, the Office of the Director of National Intelligence, the Central Intelligence Agency (CIA) and the President's national security staff. He also met the Director of CIA, in addition to the Deputy National Security Advisor for Strategic Communications and Speechwriting and the Senior Director for Multilateral Affairs and Human Rights of the President's national security staff.

15. On 13 and 14 June, the Special Rapporteur participated as a panellist in an international counter-terrorism focal points conference on addressing conditions conducive to the spread of terrorism and promoting regional cooperation, organized by the Counter-Terrorism Implementation Task Force in partnership with the Government of Switzerland.

16. On 21 June, the Special Rapporteur met the European Union Counter-Terrorism Coordinator at the European Commission and addressed the Counter-Terrorism Committee of the European Parliament in Brussels, at the invitation of the Irish Presidency. His address concerned the formulation of European Union policy on the use of remotely piloted aircraft in lethal counter-terrorism operations.

17. From 17 to 30 July, the Special Rapporteur conducted a visit to Chile, at the invitation of the Government. He will present his report thereon (A/HRC/25/59/Add.2) to the Human Rights Council at its current session.

18. On 8 August, the Special Rapporteur met senior officials of the Ministry of Defence of the United Kingdom of Great Britain and Northern Ireland in London to discuss issues relevant to the present report. He was given a detailed legal and technical briefing on the use by the United Kingdom of remotely piloted aircraft.

19. On 25 October, the Special Rapporteur presented an interim report to the General Assembly at its sixty-eighth session on his examination of the use of remotely piloted aircraft, or drones, in extraterritorial lethal counter-terrorism operations and its civilian impact (A/68/389). He also participated in a side event on "Drones and the law" with the Assistant Secretary-General for Human Rights, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and representatives of academia and non-governmental organizations (NGOs).

20. On 3 December, the Special Rapporteur participated as a third party ("amicus curiae") in the hearings by the European Court of Human Rights of the cases *Al Nashiri* v. *Poland* (application No. 28761/11) and *Husayn (Abu Zubaydah)* v. *Poland* (application No. 7511/13), which raise issues about the duty of States in international law to investigate allegations of secret detention, torture and rendition taking place on their territory and the way in which such investigations should be conducted when the material relevant to them engages the State's interest in national security.

[2] Nils Melser (Policy Department of the Directorate-General for External Policies, 2013).

III. Civilian impact of remotely piloted aircraft

A. Introduction

21. In January 2013, the Special Rapporteur began an inquiry into the use of remotely piloted aircraft, or drones, in extraterritorial lethal counter-terrorism operations, including in the context of asymmetrical armed conflict. The principal aims of the inquiry were: (a) to evaluate allegations that such operations have resulted in disproportionate levels of civilian casualties; (b) make recommendations concerning the duty of States to conduct independent and impartial investigations and to make public the results; and (c) identify the disputed issues of international law relevant to such operations, and to make recommendations aimed at promoting international consensus.

22. On 25 October, the Special Rapporteur presented an interim report to the General Assembly (A/68/389, hereinafter "the interim report") which sets out a framework for examining the factual and legal issues relevant to his inquiry, by reference to the principles laid down in the United Nations Global Counter-Terrorism Strategy.[3] The present report should be read in conjunction with the interim report and the report to the General Assembly by the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/68/382).

23. On 18 December, following the presentation of the Special Rapporteur's interim report, the General Assembly adopted by consensus resolution 68/178 on the protection of human rights and fundamental freedoms while countering terrorism. In paragraph 6 (s) of the resolution, States are urged to ensure that any measures taken or means employed to counter terrorism, including the use of remotely piloted aircraft, comply with their obligations under international law, including the Charter of the United Nations, human rights law and international humanitarian law, in particular the principles of distinction and proportionality.

24. In furtherance of that objective, the present report summarizes developments since the presentation of the Special Rapporteur's interim report to the General Assembly, including recent trends in civilian casualty rates resulting from the use of remotely piloted aircraft and other significant developments (sect. B below); it presents the conclusions of the Special Rapporteur's review of 37 strikes in which civilian casualties were reportedly sustained (sect. C below);[4] and, in i., the Special Rapporteur makes recommendations to the Council aimed at clarifying and promoting compliance with the relevant principles of international law, including international humanitarian and human rights law. The sample strike analysis in section C below is intended to provide a clear opportunity for the relevant States to fulfil their international legal obligations of transparency and accountability (as described in the interim report) by making public the results of their own inquiries into the sample strikes identified. In order to provide an up-to-date source of information on his continuing inquiries, the Special Rapporteur has set up a dedicated website, which reflects and supplements the content of his reports on remotely piloted aircraft to the General Assembly and the Council: unsrct-drones.com. The Special Rapporteur will continue to seek additional information from States on the legal justifications for the use of deadly force in counter-terrorism operations, as well as the justification for individual attacks. Subject to the consent of the State concerned, the responses received will be posted on the official web page of the mandate.

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[3] See General Assembly resolution 60/288, annex, sect. IV, para. 2.

[4] The Special Rapporteur uses the legal standards set out in the interim report as the benchmark for the inclusion of each strike in the present report: see paras. 32–36 below.

B. Recent developments

1. Civilian casualty rates

Afghanistan

25. In the interim report the Special Rapporteur noted the assessment by the United Nations Mission in Afghanistan (UNAMA) that, up to the end of 2012, confirmed drone strikes appeared to have inflicted significantly lower levels of civilian casualties than aerial attacks carried out by other air platforms (para. 30).[5] This is no longer the case. Figures for 2013 indicate that drone strikes accounted for almost 40 per cent of the total number of civilian fatalities inflicted as the result of aerial attacks by pro-Government forces. In its 2013 report, *Afghanistan Annual Report on Protection of Civilians in Armed Conflict*,[6] UNAMA records 59 civilian casualties during 2013 as the result of 19 confirmed drone strikes (comprising 45 fatalities and 14 non-fatal injuries).[7] As compared with 2012, this represents a threefold increase in the number of recorded civilian casualties from the use of drones by the International Security Assistance Force (ISAF). It also represents a significant increase in the number of civilian casualties from drone strikes as a percentage of the overall number of civilian casualties from aerial operations (including attacks by manned fixed and rotary blade aircraft).[8]

Pakistan

26. In his interim report, the Special Rapporteur noted that there had been a marked drop in reported civilian casualties from attacks by remotely piloted aircraft in the Federally Administered Tribal Areas of Pakistan during 2012 (both in absolute terms and as a percentage of overall fatalities), a trend that appeared to have continued during the first half of 2013 (para. 33). He welcomed, in that context, the August 2013 statement of the Secretary of State of the United States to the effect that there was a clearly defined timeline for ending drone strikes in Pakistan (para. 54).[9] Figures to the end of 2013 confirm that there has been a significant de-escalation in the number of recorded drone strikes in Pakistan. The total number of reported strikes for the year was 27, down from a peak of 128 in 2010. For the first time in nine years, there were no reports of civilian casualties during 2013. At the time of writing, there have been no reported drone strikes during 2014, the longest period without drone strikes since President Obama took office. The cessation in strikes coincides with peace initiatives being pursued between the Government of Pakistan and the Tehrik-i-Taliban Pakistan.

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[5] According to UNAMA, figures for 2012 showed that 16 civilians had been killed and 5 injured owing to confirmed remotely piloted aircraft strikes during the course of the year.

[6] Kabul, 2014, p. 8. Available from http://unama.unmissions.org/Portals/UNAMA/human%20rights/Feb_8_2014_PoC-report_2013-Full-report-ENG.pdf.

[7] In the UNAMA report, it is pointed out, in footnote 195, that "the number of civilian casualties from drone strikes may be higher as UNAMA is not always able to confirm which type of platform was used during an aerial operation (fixed-wing, rotary or remotely-controlled) that resulted in civilian casualties".

[8] UNAMA documented 182 civilian casualties (118 deaths and 64 injured) during 2013, from a total 54 aerial operations conducted by international military forces. Putting these figures in context, aerial operations as a whole caused 19 per cent of civilian deaths attributed to pro-Government forces, and 2 per cent of all civilian casualties. Of the civilians killed in aerial operations in Afghanistan, 45 per cent were women and children.

[9] See "John Kerry says Pakistan drone strikes could end as bilateral talks resume", *The Guardian*, 1 August 2013. Available from www.theguardian.com/world/2013/aug/01/john-kerry-us-pakistan-talks-drones.

Yemen

27. By contrast, the frequency of reported drone strikes in Yemen has increased since the Special Rapporteur's interim report, resulting in a significant number of reported civilian casualties in the final weeks of 2013 (see paras. 59 and 60 below). Recent estimates provided by Human Rights Watch allege that, since 2009, the United States has conducted at least 86 lethal counter-terrorism operations, using remotely piloted aircraft and other means, killing up to 500 people.[10] The majority of those killed is believed to have been individuals with a "continuous combat function" in Yemeni internal armed conflicts, and therefore to have been legitimate military targets under the principles of international humanitarian law. However, media monitoring organizations allege that between 24 and 71 civilians have been killed in confirmed drone strikes between 2009 and 2013.[11]

2. Other significant developments

Yemen

28. During the universal periodic review of Yemen in January 2014, the Government delegation informed the Working Group on the Universal Periodic Review that the National Dialogue Conference in Yemen had demanded the cessation of the use of armed drones (see A/HRC/26/8). The Working Group was also informed of a non-binding resolution passed by the Yemeni House of Representatives on 14 December 2013 calling for a ban on the use of armed drones in Yemen, and insisting that measures to fight terrorism should not harm civilians and should be based on human rights standards (ibid.).[12]

29. The Government of Yemen has informed the Special Rapporteur that the United States routinely seeks prior consent, on a case-by-case basis, for lethal remotely piloted aircraft operations on its territory through recognized channels, and that where consent is withheld, a strike will not go ahead. However, according to a recent report by Human Rights Watch, President Hadi told that organization during a meeting on 28 January 2014 that specific drone strikes were not pre-approved, but instead such strikes were "generally permitted" pursuant to an agreement concluded between the United States and former President Abdullah Saleh, which remains binding.[13] The Special Rapporteur invites the Government of Yemen to clarify its position in that regard. Finally, the Special Rapporteur thanks the Government of Yemen for agreeing in principle to receive a country visit from his mandate. Initially the visit was postponed at the Government's request pending the conclusion of the National Dialogue Conference in 2013. Since that time, logistical and other concerns have prevented the planned visit from taking place. The Special Rapporteur takes this opportunity to affirm his commitment to visiting Yemen as soon as possible.

Israel

30. The Special Rapporteur attended a meeting with representatives of Israel on 26 January 2014 in London. The meeting was convened at the request of Israel in the context of the Special Rapporteur's inquiries into targeted killing through the use of drones in counter-terrorism operations. The Government was represented by the Ambassador of

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[10] Human Rights Watch, *A wedding that became a funeral: US Drone Attack on Marriage Procession in Yemen* (2014). Available from www.hrw.org/sites/default/files/reports/yemen0214_ForUpload_0.pdf.

[11] See, e.g., The Bureau of Investigative Journalism, "Drone strikes in Yemen". Available from www.thebureauinvestigates.com/category/projects/drones/drones-yemen/ (accessed on 7 March 2014).

[12] See also Hakim Almasmari, "Drone Strikes Must End, Yemen's Parliament Says", CNN.com, 15 December 2013. Available from www.cnn.com/2013/12/15/world/meast/yemen-drones.

[13] Human Rights Watch, *A Wedding That Became a Funeral*, p. 6.

Israel to the United Kingdom and the Deputy Attorney-General for International Affairs. During the course of an extended and informative exchange, the Special Rapporteur was briefed on, among other matters, the efforts made by the Israeli Air Force to avoid inflicting civilian loss of life, and was shown video recordings of operational measures taken for that purpose. The Government stressed the efforts taken by its forces in all aerial operations to give advanced warnings of attacks whenever possible. Referring to the Special Rapporteur's interim report (paras. 75 and 76), the Government emphasized that a standard of zero anticipated civilian casualties goes beyond the mandatory requirements of international humanitarian law and would remain unattainable whilst legitimate military targets, particularly in Gaza, used civilian institutions as a base for military operations. The Special Rapporteur has identified a number of examples of strikes in which there are credible allegations that civilians were killed or injured as the result of Israeli drone strikes in Gaza. These are set out in chapter III, section C, below. During the course of the meeting, the Special Rapporteur requested certain additional information from the Government. That information had not been received at the time of writing of the present report.

European Union

31. On 25 February 2014, the European Parliament passed a resolution, by 534 votes to 49, calling for the adoption of a common position for the European Union on the use of armed drones. In the resolution, the European Parliament:

(a) Concluded that "drone strikes outside a declared war by a State on the territory of another State without the consent of the latter or of the Security Council constitute a violation of international law and of the territorial integrity and sovereignty of that country"; expressed its "grave concern over the use of armed drones outside the international legal framework"; and urged the European Union "to develop an appropriate policy response at both European and global level which upholds human rights and international humanitarian law";

(b) Called upon the High Representative for Foreign Affairs and Security Policy, the member States and the Council of the European Union to "oppose and ban the practice of extrajudicial targeted killings"; to "ensure that member States, in conformity with their legal obligations, do not perpetrate unlawful targeted killings or facilitate such killings by other States"; and to "include armed drones in relevant European and international disarmament and arms control regimes";

(c) Urged the Council to adopt an European Union common position on the use of armed drones;

(d) Called upon the European Union "to promote greater transparency and accountability on the part of third countries in the use of armed drones with regard to the legal basis for their use and to operational responsibility, to allow for judicial review of drone strikes and to ensure that victims of unlawful strikes have effective access to remedies".

C. Sample strike analysis

32. In his interim report to the General Assembly, the Special Rapporteur made specific recommendations aimed at strengthening compliance with the applicable legal standards on accountability and transparency (paras. 41–50, 78 and 80). Having regard to the duty of States to protect civilians in armed conflict, the Special Rapporteur concluded that, in any case in which there have been, or appear to have been, civilian casualties that were not anticipated when the attack was planned, the State responsible is under an obligation to

conduct a prompt, independent and impartial fact-finding inquiry and to provide a detailed public explanation of the results (para. 78). This obligation is triggered whenever there is a plausible indication from any apparently reliable source that unintended civilian casualties may have been sustained, including where the facts are unclear or the information is partial or circumstantial (whether the attack was initiated by remotely piloted aircraft or other means, and whether it occurred within or outside an area of active hostilities) (paras. 41–50, 78 and 80).[14] In a modest extension of the approach adopted in the Turkel Commission report,[15] the Special Rapporteur concluded that the international human rights law principle of transparency applies not only to those cases in which a full criminal investigation is launched, but also to preliminary fact-finding inquiries. Subject to redactions on grounds of legitimate national security, he recommended that a full explanation should be made public in each case, and that this obligation ought to be viewed as an inherent part of a State's legal duties of accountability under international humanitarian law and international human rights law.[16]

33. The Special Rapporteur has adopted and applied this standard to a sample of individual strikes in which remotely piloted aircraft are alleged to have been implicated in the infliction of civilian casualties. Having considered the available sources, the Special Rapporteur has identified 30 strikes (out of a total of 37 strikes initially brought to his attention) in which there is a plausible indication that civilians were killed or sustained life-threatening injuries, or in which civilian lives were put at immediate risk. With the assistance of a team of researchers he has sifted the available evidence to determine whether there is a plausible and credible allegation of civilian casualties, from apparently reliable sources, such as to trigger the duties of investigation and transparency.

34. The list below is intended to be illustrative rather than exhaustive. The criteria adopted for including a strike in the list are: (a) that there is an allegation emanating from an apparently reliable source, or from multiple independent sources, that civilians have been killed, seriously injured or had their lives put at immediate risk in an operation in which remotely piloted aircraft are alleged to have been involved; (b) that, in the absence of any official public explanation from the State(s) responsible, the number and/or proportion of civilians harmed arguably raises a reasonable suspicion that the action taken may have been unlawful; and (c) that there is sufficient information to identify the location, the date and approximate time of the incident. In those cases where it has not been possible to identity the victim(s) and inquire into their backgrounds, the Special Rapporteur has required other credible indications that the victims were, or included, civilians.

35. It is important to emphasize that the mere existence of credible allegations that civilians were killed or injured in these incidents does not necessarily establish any violation of international humanitarian law or international human rights law. Still less does it provide clear evidence of the commission of a war crime. Indeed, most of the relevant evidence which could confirm or dispel such a suspicion remains in the exclusive possession of the alleged perpetrator States. However, in each of the cases identified, the Special Rapporteur has evaluated the available sources, looking for indicia of reliability,

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[14] Similarly, the European Parliament resolution on the use of armed drones of 25 February 2014 states that, in the event of allegations of civilian deaths as a result of drone strikes, States are under the obligation to conduct prompt, independent investigations and, if the allegations are proved correct, to proceed to public attribution of responsibility, punishment of those responsible and provision of access to redress, including payment of compensation to the families of victims.

[15] See the Public Commission to Examine the Maritime Incident of 31 May 2010, *Israel's Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Laws of Armed Conflict according to International Law: Second report — the Turkel Commission* (2013). Available from www.turkel-committee.gov.il/files/newDoc3/The%20Turkel%20Report%20for%20website.pdf.

[16] Ibid. and A/68/389, para. 45.

and has judged the information and evidence he has seen to be sufficient to cross the threshold identified in his interim report as imposing a duty on the relevant States to provide a public explanation of the circumstances and the justification for the use of deadly force.

36. In the opinion of the Special Rapporteur, the States responsible are under a present and continuing obligation to make public, in as much detail as possible, and subject only to such redactions as are strictly necessary to meet legitimate national security concerns, the results of any fact-finding investigations that have been conducted into the incidents identified in the present section of the report. If no fact-finding investigation has so far taken place, the Special Rapporteur considers that the States concerned are under an obligation to indicate this publicly, and provide an explanation.

37. By way of illustration, the Special Rapporteur draws attention to the one instance in which the United States has previously made public significant parts of an investigation report into a strike in which civilian casualties were sustained in Afghanistan. On 21 February 2010, precision-guided munitions were discharged from a United States military helicopter aimed at three pick-up trucks travelling near Khotal Chowzar, a mountain pass that connects Daikundi with Oruzgan. The attack occurred 12 km from the village of Khod in the Shahidi Hassas district. Remotely piloted aircraft under the control of the United States were involved in assessing and determining the target of the operation. Up to 23 civilians were reportedly killed and 12 civilians were injured. The victims included eight men, one woman and three children under the age of 14. The findings of an investigation conducted by ISAF were partially declassified. The investigation concluded that the Predator drone crew involved had provided misleading situational information, that there was evidence of inaccurate and unprofessional reporting, and a propensity to "kinetic activity" (the discharge of precision-guided munitions). It recommended administrative and disciplinary sanctions.[17] The publication of the investigation report is a model of accountability and transparency and sets a benchmark to be followed in other cases. In the opinion of the Special Rapporteur, the States implicated in the incidents set out below are under a duty to release the substance of all investigation reports in a level of detail comparable to that adopted in the case in question.

38. The Special Rapporteur therefore calls on relevant States to respond to the allegations set out below. He has written separately to them inviting their comments. Any responses that are received will, subject to the consent of the State concerned, be posted on the official web page of the mandate.

Afghanistan

39. On 25 March 2011, precision-guided munitions were discharged at two vehicles travelling in the Now Zad district of Helmand province. Both vehicles were destroyed; six people were killed and two injured. Remotely piloted aircraft under the control of ISAF (United Kingdom) were involved in the operation. The United Kingdom has confirmed that, in addition to killing two men believed to be combatants (who were the targets of the attack), the operation resulted in the deaths of four non-combatants and the infliction of serious injuries on two further non-combatants. Contemporaneous reports suggest that the two identified targets were travelling in the first vehicle, and that the dead included two women and two children who were travelling in the following vehicle. The incident was investigated by the Joint Incident Assessment Team at ISAF, which concluded that the operation had been directed at two pick-up trucks believed to be carrying explosives and

[17] Memorandum for Commander, United States Forces – Afghanistan, 13 April 2010, executive summary for AR-15-6 investigation, 21 February 2010, air-to-ground engagement in the vicinity of Shahidi Hassas, Oruzgan.

found that the actions of the crew had been in accordance with the applicable rules of engagement.[18] The Special Rapporteur calls on the United Kingdom to declassify and publish the results of the investigation report (and of any other report relating to the infliction of civilian casualties through the use of remotely piloted aircraft by the United Kingdom in Afghanistan).

40 On 23 September 2012, precision-guided munitions were reportedly discharged in the Marawara district of Kunar province, reportedly injuring a teenage girl who was working in a nearby agricultural field. Remotely piloted aircraft under the control of ISAF (United States) are alleged to have been involved in the operation. UNAMA has reported that the victim later died on the way to the Asadabad public health hospital.

41. On 20 October 2012, precision-guided munitions were reportedly discharged in the Baraki Barak district of Logar province. Remotely piloted aircraft under the control of ISAF (United States) are alleged to have been involved in the operation. Four children, aged between 11 and 13 years were reportedly killed whilst tending livestock. Three died immediately and the fourth is reported to have died en route to a hospital in Kabul. ISAF later issued a statement indicating that it was aware of possible civilian casualties resulting from the operation.[19]

42. On 12 November 2012, precision-guided munitions were reportedly discharged in the Shaqti Qala area of Baraki Barak district of Logar province. Remotely piloted aircraft under the control of ISAF (United States) are alleged to have been involved in the operation. Three children, all under the age of 16, were reportedly killed whilst working in a field. Reports concerning the affiliations and activities of the victims suggest that all three were civilians.

43. On 5 December 2012, precision-guided munitions were reportedly discharged in the Waygal district of Nuristan province. Remotely piloted aircraft under the control of ISAF (United States) are alleged to have been involved in the operation. At least three non-combatant civilians are alleged to have been killed (two adult male teachers and a child, all members of the same family). It has since been reported that two other children may have been killed in the attack. Inquiries concerning the affiliations and activities of the two adult victims suggest that they were civilians.

44. On 24 February 2013, precision-guided munitions reportedly struck the village of Meya Saheeb in the Hisarak district of Nangarhar province. Remotely piloted aircraft under the control of ISAF (United States) are alleged to have been involved in the operation. Five adult males were killed, and inquiries concerning their affiliations and activities suggest that at least three of them were civilians.

45. On 15 June 2013, precision-guided munitions were reportedly fired on a house in the Dara-i-Pech area of Nangham district in Kunar province. Remotely piloted aircraft under the control of ISAF (United States) are alleged to have been involved in the operation. Three civilians, including one woman, are reported to have been killed and at least six civilians, including one woman, are reported to have been injured. All the victims were members of the same family.

46. On 7 September 2013, precision-guided munitions were reportedly discharged at a vehicle in the Watapur district of Kunar province. Remotely piloted aircraft under the control of ISAF (United States) are alleged to have been involved in the operation. Six

[18] See www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120626/text/120626w0002.htm#120626119000810.

[19] See "NATO kills 4 children in Afgha East: Karzai", Reuters, 23 October 2012. Available from www.reuters.com/article/2012/10/23/us-afghanistan-taliban-idUSBRE89M0N120121023.

combatants and ten civilians were reportedly killed in the attack, and one civilian (a 4-year-old girl) was injured. The incident was investigated by UNAMA and is detailed in its 2013 annual report on civilian casualties.[20] According to the report, ISAF initially denied the possibility of civilian casualties. However, after being pressed by UNAMA to investigate further, ISAF officials confirmed that one woman and one child had been killed, and was unable to rule out the possibility of at least one further woman civilian having been killed.[21] ISAF informed UNAMA that approval of the strike was obtained from all required levels of ISAF and Afghan national security forces' chain of command. ISAF has not published the results of its investigations. The UNAMA report concludes (p. 47):

> In the case of the 7 September UAV/RPA [unmanned aerial vehicle or remotely piloted aircraft] strike in Watapur, UNAMA raises concern about possible negligence of international military forces and a possible failure to take sufficient precautionary measures. The advanced surveillance technology, equipment and extensive intelligence networks used by international military forces, combined with operational policies oriented towards reducing harm, should provide a sufficiently robust framework to ensure the degree and kind of care that limits, if not eliminates, disproportionate collateral damage.
>
> The apparent failure, however, of international forces to identify the presence of a group of women and children in a vehicle prior to engaging the vehicle with a UAV/RPA strike could suggest negligence. Of further concern was the apparent failure of international military forces to confirm the identity and/or status of the men accompanying the fighter targeted by international military forces.

Pakistan

47. On 30 October 2006, precision-guided munitions were reportedly fired at a religious seminary in Chenagai in the Bajaur tribal region. Remotely piloted aircraft under the control of the United States are alleged to have been involved in the operation. Up to 80 people were reportedly killed instantly during the attack; two more victims reportedly died in hospital shortly afterwards as the result of injuries sustained. It is alleged that as many as 69 of the dead were children under 18 years of age, and that 16 of those killed were under the age of 13. Eyewitnesses allege that the majority of those killed had been pupils at the seminary and were non-combatant civilians. The identities of some of the deceased can be found at: unsrct-drones.com/.

48. On 23 June 2009, precision-guided munitions were reportedly discharged at a large funeral ceremony in Lattaka, South Waziristan, following the death of Khwaz Wali, a local Taliban leader, who had been killed earlier that day. Remotely piloted aircraft under the control of the United States are alleged to have been involved in the attack on the funeral. Eyewitnesses have confirmed that, whilst the mourners included active members of the Tehrik-i-Taliban, there were significant numbers of civilians present. Reports suggest that up to 83 people were killed. The estimated number of non-combatant fatalities varies between 18 and 50. However, credible reports indicate that 10 children and 4 tribal elders were reportedly among the dead. In addition, 27 people, including a number of children, were reportedly treated for injuries at a local hospital in Miranshah.

49. On 4 October 2010, precision-guided munitions reportedly struck a group of men who were gathered in a courtyard of a house on the outskirts of Mir Ali, North Waziristan, killing all of the intended targets. Two of the dead were identified as Bünyamin Erdogan, a German national, and Dashti Shabab, a dual Iranian-German national. According to a

[20] UNAMA, *Afghanistan Annual Report*.
[21] Ibid., p. 45.

German federal investigation, both men were engaged in paramilitary activity and had a "continuous combat function"[22] rendering them legitimate military targets. The identity of the other three fatalities is unconfirmed but they are reported to have been local Pashtun tribesmen. Remotely piloted aircraft under the control of the United States are alleged to have been involved in the operation. Three other men, including Emrah Erdogan, a German national, survived the attack. Two women, both of whom were pregnant, and a 5-year-old boy, also survived. Emrah Erdogan has since been charged with terrorism offences in Germany. The Special Rapporteur considers a number of those present at the time of the attack to have enjoyed protected civilian status. A detailed account of the strike, together with a forensic reconstruction provided to the Special Rapporteur's inquiry by one of the eyewitnesses, is available at: unsrct-drones.com/. The Special Rapporteur notes that the targeted individuals reportedly had affiliations with non-State armed groups. He also notes the precision nature of the strike. Nonetheless, the Special Rapporteur considers that, since the lives of apparent non-combatant civilians were lost or put at serious risk, the strike satisfies the criteria identified in paragraph 34 above.

50. On 17 March 2011, precision-guided munitions were reportedly fired at a tribal council meeting (jirga) taking place in an open space adjacent to the Nomada bus depot in Datta Khel, North Waziristan. Remotely piloted aircraft under the control of the United States are alleged to have been involved in the operation. The meeting had reportedly been convened for the purpose of resolving disputed claims concerning the rights to a chromite mine. The local authorities had been notified in advance of the meeting, which had begun the previous day. According to custom, tribal elders (maliks) were seated in two circular formations. Witness reports and satellite imagery analysis suggest that at least two strikes were conducted in very short succession, targeting both groups of men. The most reliable estimates suggest that 43 people were killed in the attack and 14 injured. The overwhelming majority of those killed or injured were reportedly civilians, and included tribal elders and government officials. The confirmed identities of some of the dead, together with a forensic reconstruction of the attack, are available at: unsrct-drones.com/.

51. On 15 June 2011, precision-guided munitions were reportedly fired at a car travelling along the main road between Miranshah and Sirkot in North Waziristan. The strike occurred six miles east of Miranshah. Remotely piloted aircraft under the control of the United States are alleged to have been involved in the operation. Five of the dead were confirmed to be Akram Shah, Atiq-ur-Rehman, Irshad Khan, Sherzada and Umar Khan. They were reportedly travelling in a vehicle belonging to Akram Shah, who was employed as a driver by the Pakistani Water and Power Development Authority. Inquiries into the affiliations and activities of the victims suggest that all of them were civilians.

52. On 31 October 2011, precision-guided munitions reportedly struck a car and a house in the Norak area of North Waziristan, killing four people. Remotely piloted aircraft under the control of the United States are alleged to have been involved in the operation. Two of the dead were confirmed to be Tariq Aziz and Waheed Ullah, two teenagers who were travelling in the vehicle to collect other members of the local football team with whom they played. Inquiries into the affiliations and activities of the two boys strongly suggest that they were both civilians. The affiliations of the other two victims are unknown.

53. On 6 July 2012, precision-guided munitions were reportedly discharged in Zowi Sidgi village in North Waziristan. Remotely piloted aircraft under the control of the United States are alleged to have been involved in the operation. The first missiles reportedly struck a tent in which a group of labourers had gathered at the end of their working day, killing eight of the occupants. A second strike reportedly occurred shortly afterwards,

[22] For the meaning of the phrase "continuous combat function", see A/68/389, para. 69; and A/68/382, para. 68. See also para. 71 (f) below.

killing a number of first responders. A total of 18 people were reportedly killed in the strikes and a further 22 injured. Inquiries into the affiliations and activities of the victims suggest that all of those killed were civilians. In October 2013, Amnesty International reported the results of field research into this incident.[23]

54. On 24 October 2012, precision-guided munitions reportedly struck an area of agricultural land in Ghundi Khala village in North Waziristan. Remotely piloted aircraft under the control of the United States are alleged to have been involved in the operation. The sole victim, a 68-year-old woman named Manama Bibi, was killed instantly. Eyewitness reports from members of her family indicate that at the time of the attack the victim was picking vegetables, and was in an isolated position in the middle of a field, some distance away from the nearest road or building. Inquiries into her affiliations and activities suggest that she was a civilian. In October 2013, Amnesty International reported the results of field research into this incident.[24]

Yemen

55. On 14 July 2011, munitions were reportedly launched at a police station in the town of Al-Wade'a in Abyan province. Aircraft under the control of either the United States or Yemen are alleged to have been involved in the operation. The evidence is currently equivocal as to whether the air platforms used were manned or unmanned. Reports suggest that the police station had been taken over by members of Al-Qaida, but that there were also significant numbers of civilians present at the location. Unconfirmed estimates put the total number of people killed at up to 50, of whom approximately 30 are alleged to have been civilians. The Special Rapporteur notes that the targeted individuals were reportedly engaged in military activities. Nonetheless, he considers that since the lives of apparent non-combatant civilians were lost in the attack it satisfies the criteria identified in paragraph 34 above.

56. On 14 October 2011, precision-guided munitions were launched at an outdoor location in Azzan in Shawba province. Remotely piloted aircraft under the control of the United States were involved in the operation. At least six, and possibly up to nine, people were killed in the attack, including Abdulrahman al-Awlaki, a 16-year-old United States citizen and a number of his cousins. Inquiries suggest that some, if not all, of those killed were civilians. On 22 May 2013, the United States Attorney General, in a letter to the Chairman of the United States Senate Judiciary Committee,[25] formally acknowledged that Abdulrahman al-Awlaki had been killed in a United States counter-terrorism operation, indicating that he had not been a specific target of the attack, but not otherwise explaining his death or specifying any other legitimate military target for the operation.

57. On 15 May 2012, munitions reportedly struck two buildings in the town of Ja'ar in Abyan province. Aircraft under the control of either the United States or Yemen are alleged to have been involved in the operation. The evidence is currently equivocal as to whether the air platforms used were manned or unmanned. The first strike reportedly hit and destroyed the houses of Nuweir al-Arshani and his neighbour Muhammed Salih Abdullah al-Amri. Nuweir al-Arshani is said to have been killed instantly and there were a number of other reported casualties as a result of the initial attack. Shortly afterwards, a second strike is alleged to have occurred, killing and injuring civilians who had gathered in the street nearby. Estimates suggest that at least 14 named civilians were killed in the attack,

[23] Amnesty International, *"Will I Be Next?" US drone strikes in Pakistan* (2013), pp. 24 ff. Available from www.amnesty.org/en/library/asset/ASA33/013/2013/en/041c08cb-fb54-47b3-b3fe-a72c9169e487/asa330132013en.pdf.

[24] Ibid., pp. 18 ff.

[25] Available from www.justice.gov/ag/AG-letter-5-22-13.pdf.

including a pregnant woman who was hit by flying shrapnel, and that a further 20 civilians were injured.

58. On 29 August 2012, precision-guided munitions were reportedly targeted at and killed a group of five men gathered in open space behind a mosque in the village of Khashamir in Hadramout province. Remotely piloted aircraft under the control of the United States are alleged to have been involved in the operation. Three of the deceased were reportedly members of Al-Qaida in the Arabian Peninsula. The evidence, however, strongly suggests that the other two men were civilians. One of the men killed in the attack was Salem Ben Ahmed Ben Salim Ali Jaber, an imam of the al-Mutadharirin mosque and an outspoken opponent of Al-Qaida in the Arab Peninsula. The other was Walid Abhallah Abdelhamud Ben Ali Jaber, a relative of the imam and a local traffic policeman. Inquiries into the affiliations and activities of these two victims strongly suggest that both men were civilians. In October 2013, Human Rights Watch reported the results of field research into this incident.[26] The Special Rapporteur notes that the targeted individuals who were with Salem Ben Ahmed Ben Salim Ali Jaber and Walid Abhallah Abdelhamud Ben Ali Jaber were reportedly engaged in military activities, and he notes the precision nature of the attack. Nonetheless, he considers that, since two civilians were also killed in the attack, it merits investigation and satisfies the criteria identified in paragraph 34 above.

59. On 2 September 2012, precision-guided munitions were fired at a vehicle that was being used as a civilian shuttle bus in the vicinity of Rad'a in the Walad Rabi' district of Al-Bayda province. The attack reportedly occurred whilst the vehicle was stationary at the intersection of two roads leading to the villages of Sabool and Manasseh. Aircraft under the control of the United States are alleged to have been involved in the operation. The evidence is currently equivocal as to whether the air platforms used were manned or unmanned. Eleven civilians, including three children and a pregnant woman, were reported to have been killed instantly, and a twelfth is reported to have died as the result of his injuries shortly after the attack. Inquiries into the affiliations and activities of the victims suggest that all of those killed were civilians. In October 2013, Human Rights Watch reported the results of field research into this incident.[27]

60. On 12 December 2013, precision-guided munitions were reportedly fired at a convoy of vehicles making their way to a wedding celebration outside the city of Rad'a in Al-Bayda province. Remotely piloted aircraft under the control of the United States are alleged to have been involved in the operation. At least 12, and possibly as many as 15, individuals were reportedly killed, and at least 10 other individuals sustained non-fatal injuries, including the bride. Initial reports suggest that the majority of the victims may have been civilians, although there are indications that members of Al-Qaida in the Arabian Peninsula may have been the targets and were among the dead. The attacks were condemned in a joint statement issued on 26 December 2013 by the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.[28] In February 2014, Human Rights Watch published the results of field research into the attack, which raised serious questions as to whether the attack conformed to the criteria set down in a speech by the

[26] Human Rights Watch, *"Between a Drone and Al-Qaeda": The Civilian Cost of US Targeted Killings in Yemen* (2013), pp. 61 ff. Available at http://www.hrw.org/reports/2013/10/22/between-drone-and-al-qaeda-0.

[27] Ibid., pp. 53 ff.

[28] Press release, "UN experts condemn lethal drone airstrikes in Yemen. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14145&LangID=E.

President of the United States on 23 May 2013, most notably that a strike would not proceed unless there was a "near certainty" that no civilians would be killed or injured.[29]

Somalia

61. The information that was provided to the Special Rapporteur concerning the use of remotely piloted aircraft in Somalia was sparse. This appears to be due, at least in part, to the security situation on the ground, which has severely limited access to certain parts of the country by the media and has imposed significant constraints on reliable independent reporting. The Special Rapporteur has examined information concerning a number of specific strikes, but has concluded that only one of the incidents examined met the criteria set out in paragraph 34 above. That is not to be taken to imply that the level of civilian deaths in Somalia as the result of the use of remotely piloted aircraft is lower or higher than elsewhere. It merely confirms that there was very little reliable independent evidence of civilian casualties in the limited number of strikes in Somalia that have been brought to the attention of the Special Rapporteur.

62. On 24 February 2012, precision-guided munitions hit a convoy of vehicles in an area in the Lower Shabelle region, approximately 60 km south of Mogadishu. Remotely piloted aircraft under the control of the United States are alleged to have been involved in the operation. Reports indicate between four and seven fatalities in the strike, including Mohamed Sakr, a dual Egyptian-British national whose British citizenship had been revoked in 2010 on suspicion of his involvement in terrorism associated with Al Shabaab. Sources conflict on the number and identity of the deceased. However, one witness has identified Maxamed Abdullahi, a local tribesman, camel-herdsman and mediator, as having been among the dead. Inquiries suggest that he was a civilian.

Gaza

63. On 27 December 2008, precision-guided munitions reportedly struck an outdoor location on a street opposite the Gaza Technical College in Gaza City. Remotely piloted aircraft under the control of Israel are alleged to have been involved in the operation. Twelve people were confirmed to have been killed in the strike.[30] The confirmed identities of the deceased can be found at: unsrct-drones.com/. Reports concerning the affiliations and activities of the victims suggest that all but one were civilians. Nine of those killed were reportedly students at the college. Human Rights Watch and B'Tselem have published the results of field research into this incident.[31] The Special Rapporteur understands that the competent Israeli authorities investigated the incident, but concluded that there was no evidence warranting criminal charges. The details of the investigation, and the reason for its conclusion, have not been made public.

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[29] See Human Rights Watch, *A Wedding That Became a Funeral*, pp. 5–6. See also "The Future of our Fight against Terrorism" remarks of the President of the United States for delivery at the National Defense University; United States, "Fact sheet: U.S. policy standards and procedures for the use of force"; and A/68/389, para. 76.

[30] The Special Rapporteur has been informed of the identity of one additional casualty who reportedly died later in hospital of wounds sustained during the attack. This information has not been independently verified.

[31] Human Rights Watch, *Precisely Wrong: Gaza Civilians Killed by Israeli Drone-Launched Missiles* (2009), pp. 14 ff. Available from www.hrw.org/reports/2009/06/30/precisely-wrong-0. B'Tselem, "Palestinians who did not take part in the hostilities and were killed by Israeli security forces (not including the objects of targeted killings) in the Occupied Territories". Available from www.btselem.org/statistics/fatalities/any/by-date-of-event/wb-gaza/palestinians-killed-during-the-course-of-a-targeted-killing-not-hisul.

64. On 4 January 2009, precision-guided munitions reportedly struck a house in Gaza City killing two young people. Remotely piloted aircraft under the control of Israel are alleged to have been involved in the operation. The deceased were named as Mahmud Khaled 'Alayyan al-Masharawi (aged 12) and Ahmad Khader Diyab Subayh (aged 17). Reports concerning the affiliations and activities of the victims suggest that they were both civilians. In June 2009, Human Rights Watch published the results of field research into this incident.[32] The Special Rapporteur understands that the competent Israeli authorities investigated the allegations made by Human Rights Watch but concluded that there was no evidence warranting criminal charges. The details of this investigation, including the reasons for its conclusion, have not been made public.

65. On 4 January 2009, precision-guided munitions reportedly struck the Al-Habbash family house in the Al-Sha'f area of Gaza City killing two children and severely injuring three other young people. Remotely piloted aircraft under the control of Israel are alleged to have been involved in the operation. The deceased were named as Shaza al-'Abd Muhammad al-Habbash (aged 10) and Isra Qusai Muhammad al-Habbash (aged 12). Those sustaining non-fatal injuries were named as Jamila al-'Abd al-Habbash (aged 14), Mahmud 'Amr al-Habbash (aged 15) and Muhammad 'Amr al-Habbash (aged 16). Reports concerning the affiliations and activities of the victims suggest that they were all civilians. In June 2009, Human Rights Watch published the results of field research into this incident.[33] The Special Rapporteur understands that the competent Israeli authorities investigated the allegations made by Human Rights Watch but concluded that there was no evidence warranting criminal charges. The details of the investigation, including the reasons for its conclusion, have not been made public.

66. On 5 January 2009, precision-guided munitions reportedly struck the 'Allaw family house in the Al-Sha'f area of Gaza City, killing one child and injuring two others. Remotely piloted aircraft under the control of Israel are alleged to have been involved in the operation. The deceased was named as Mu'min Mahmoud Talal 'Allaw (aged 10). Those sustaining non-fatal injuries were named as Muhammad 'Allaw (aged 13) and Iman 'Allaw (aged 8). Reports concerning the affiliations and activities of the victims suggest that they were all civilians. In June 2009, Human Rights Watch published the results of field research into this incident.[34] The Special Rapporteur understands that the competent Israeli authorities investigated the allegations made by Human Rights Watch but concluded that there was no evidence warranting criminal charges. The details of the investigation, including the reasons for its conclusion, have not been made public.

67. On 9 January 2009, precision-guided munitions reportedly struck the Salha family house in the Beit Lahia Housing Project in Gaza, killing two women and six children. Remotely piloted aircraft under the control of Israel are alleged to have been involved in the operation. The deceased were named as Randa Salha (aged 34), Fatma Salha (aged 22), Rouala Salha (aged 1), Baha al-Din Salha (aged 4), Rana Salha (aged 12) and Diya al-Din Salha (aged 14). Reports concerning the affiliations and activities of the adult victims suggest that they were all civilians. In July 2009, Amnesty International published the results of field research into the incident.[35]

68. On 19 November 2012, precision-guided munitions reportedly struck an area of farmland adjacent to a house in Ahmad Yassin Street, north of Gaza City, killing three

[32] Human Rights Watch, *Precisely Wrong*, pp. 21 ff.

[33] Ibid., pp. 22 ff.

[34] Ibid., pp. 24 ff.

[35] Amnesty International, *Israel/Gaza: Operation Cast Lead: 22 Days of Death and Destruction* (London, 2009), pp. 11 and 12. Available from www.amnesty.org/en/library/info/MDE15/015/2009/en.

people. Remotely piloted aircraft under the control of Israel are alleged to have been involved in the operation. The deceased were a father, his 12-year-old daughter, and his 19-year-old son. All three were reportedly picking spearmint at the time of the attack. Investigations conducted by the Office of the United Nations High Commissioner for Human Rights indicate that all three victims were civilians; that no warnings were issued to residents prior to the attack; and that no militant activities were being carried out in the location (A/HRC/22/35/Add.1, para. 13).

69. On 21 November 2012, precision-guided munitions struck an olive farm east of Khan Younis, southern Gaza Strip, killing two people and injuring a third. Remotely piloted aircraft under the control of Israel are alleged to have been involved in the operation. The deceased were named as Ibrahim Abu Nasser (84 years old) and Amira Abu Nasser (his 14-year-old granddaughter). Mohamed Abu Nasser (aged 42) sustained non-fatal injuries in the attack. In February 2013, Human Rights Watch published the results of field research into this incident.[36] Investigations conducted by the Office of the United Nations High Commissioner of Human Rights indicate that all three victims were civilians; that they were working on the farm at the time of the attack; that no warnings were issued to residents prior to the attack; and that no militant activities were being carried out in the location (ibid.).

D. Achieving a consensus on the applicable legal principles

70. In his interim report to the General Assembly, the Special Rapporteur identified a number of legal issues on which there is currently no clear international consensus, or where current practices and interpretations appear to challenge established legal norms (paras. 51–76). Legal uncertainty in relation to the interpretation and application of the core principles of international law governing the use of deadly force in counter-terrorism operations leaves dangerous latitude for differences of practice by States. This runs counter to the obligation identified in paragraph 6 (s) of General Assembly resolution 68/178 (see para. 23 above); fails to provide adequate protection for the right to life; poses a threat to the international legal order; and runs the risk of undermining international peace and security.

71. There is thus an urgent and imperative need to reach a consensus between States on, inter alia, the following issues:

(a) Does the international law principle of self-defence entitle a State to engage in non-consensual lethal counter-terrorism operations on the territory of another State against a non-State armed group that poses a direct and immediate threat of attack, even when the armed group concerned has no operational connection to its host State? If so, under what conditions does such a right of self-defence arise? Does such a right arise where the territorial State is judged to be unable or unwilling to prevent the threat from materializing? If so, what are the criteria for determining "unwillingness" or "inability" to act?[37]

(b) Is the international law principle of self-defence confined to situations in which an armed attack has already taken place, or does it entitle a State to carry out pre-emptive military operations against a non-State armed group on the territory of another

[36] Human Rights Watch, "Israel: Gaza Airstrikes Violated Laws of War", 12 February 2012. Available at www.hrw.org/news/2012/02/12/israel-gaza-airstrikes-violated-laws-war.

[37] For a discussion of the issues, see the Special Rapporteur's interim report to the General Assembly, A/68/389, paras. 55 and 56; and the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/68/382, paras. 88–92.

State, without the territorial State's consent, where it judges that there is an imminent risk of attack to its own interests? If so, how is imminence to be defined?[38]

(c) Does the international humanitarian law test of intensity of hostilities (which is one of the criteria determining whether a non-international armed conflict exists) require an assessment of the severity and frequency of armed attacks occurring within defined geographical boundaries? In applying the intensity test to a non-State armed group operating transnationally, is it legitimate to aggregate armed attacks occurring in geographically diverse locations in order to determine whether, taken as a whole, they cross the intensity threshold so as to amount to a non-international armed conflict? If it is possible for a State to be engaged in a non-international armed conflict with a non-State armed group operating transnationally, does this imply that a non-international armed conflict can exist which has no finite territorial boundaries?[39]

(d) Does international humanitarian law permit the targeting of persons directly participating in hostilities who are located in a non-belligerent State and, if so, in what circumstances?[40]

(e) Do the pattern and frequency of the armed attacks currently being perpetrated by Al-Qaida, and the various affiliate organizations in different parts of the world that claim allegiance to Al-Qaida, satisfy (or continue to satisfy) the criteria of organization and intensity required under international humanitarian law to qualify as a state of armed conflict?[41]

(f) Assuming that a non-international armed conflict exists, does the test of "continuous combat function", as elaborated by the International Committee of the Red Cross for determining whether a person is a "member" of an armed group (such that that person may be targeted with lethal force at any time) reflect customary international law? If not, what is the correct test?[42]

(g) Does the guidance promulgated by the International Committee of the Red Cross for "direct participation in hostilities" reflect customary international law? In particular, does an individual who has participated in hostilities cease to be targetable during a pause in his or her active involvement? Does providing accommodation, food, financing, recruitment or logistical support amount to "direct participation in hostilities" for targeting purposes?[43]

(h) In the context of non-international armed conflict, when (and under what circumstances) does international humanitarian law impose an obligation to capture rather than kill a legitimate military target where this is feasible?[44]

72. The Special Rapporteur invites Member States to express their views on these questions prior to the twenty-seventh session of the Human Rights Council and (subject to

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[38] See A/68/389, paras. 57 and 58; A/68/382, para. 92.

[39] See A/68/389, paras. 62–65; A/68/382, paras. 64–66.

[40] Ibid.

[41] See A/68/389, paras. 66–69; A/68/382, paras. 55–63. For a comprehensive and up-to-date assessment of the threat of armed attack by Al-Qaida and its various affiliate organizations, and the degree of operational coordination, organization and leadership among the various groups, see the fifteenth report of the Analytical Support and Sanctions Monitoring Team established pursuant to Security Council resolution 1526 (2004), transmitted with the letter dated 22 January 2014 from the Chair of the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities addressed to the President of the Security Council (S/2014/41).

[42] A/68/389, para. 69; A/68/382, para. 68.

[43] A/68/389, paras. 70–72; A/68/382, paras. 69–71.

[44] A/68/382, paras. 77–79.

any requests for confidentiality) will publish the responses as they are received on the official web page of the mandate.

73. The Special Rapporteur recommends that the Council take effective steps, by means of an appropriate resolution aimed at:

- Urging all States to ensure that any measures taken to counter terrorism, including the use of remotely piloted aircraft, comply with their obligations under international law, including international humanitarian law and international human rights law, in particular the principles of precaution, distinction and proportionality;
- Urging all States to ensure that, in any case in which there is a plausible indication from any apparently reliable source that civilians have been killed or injured in a counter-terrorism operation, including through the use of remotely piloted aircraft, the relevant authorities conduct a prompt, independent and impartial fact-finding inquiry, and provide a detailed public explanation;
- Urging all States that use remotely piloted aircraft for lethal counter-terrorism operations, and all States on whose territory such operations occur, to clarify their position on the legal and factual issues raised in the present report and the Special Rapporteur's interim report to the General Assembly (A/68/389); to declassify, to the maximum extent possible, information relevant to lethal extraterritorial counter-terrorism operations; to make public the results of all fact-finding investigations into alleged civilian casualties resulting from such operations; and to release their own data on the level of civilian casualties inflicted through the use of remotely piloted aircraft, together with information on the evaluation methodology used.

74. Further, the Special Rapporteur recommends that the Council convene an interactive panel discussion of experts at its twenty-seventh session to further deliberate on the issues raised in the present report; and mandate the Office of the United Nations High Commissioner for Human Rights to submit a summary of the deliberations of the panel discussion to the Council at its twenty-eighth session.

IV. Conclusions and recommendations

75. **The Special Rapporteur:**

(a) Calls upon the States identified in chapter III, section C, of the present report to disclose the results of any fact-finding inquiries into the alleged incidents listed therein, or to explain why no such inquiries have been made;

(b) Calls upon the States on whose territory those strikes reportedly took place to provide as much information as possible in connection with those strikes;

(c) Encourages all States to respond to his requests for clarification of their position in relation to the questions raised in paragraph 71 of the present report.

(d) Recommends that the Council adopt a resolution phrased in the terms outlined in paragraphs 73 and 74 of the present report.